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THE PRIVATE SECTOR: AN INTERNATIONAL & DOMESTIC LEGAL PERSPECTIVE

Abstract

Private players are making inroads in asteroid mining, mars exploration, moon resource utilisation and space tourism. The Outer Space Treaty (OST), which has provided the legal framework within which space activities have been carried out needs to be reformed to meet this evolution. Moreover, even domestic legislations- both existing and those that are to follow in the near future need to cover the new space activities. Countries have started recognising ownership rights of private entities but due to lack of an international consensus several issues persist. For example, The SPACE Act permits U.S. private operators to extract, utilise and/or sell resources found in outer space. But, would other countries recognise the private ownership of minerals extracted from space? If a foreign state refused to extend such recognition, could it impound a returning spacecraft carrying space resources? Thus, while such domestic legislation and regulatory initiatives will be welcomed by private operators, they do not necessarily resolve all the issues associated with private activity. When the OST was drafted, State space agencies were the only players in space. This paper points out lacunae in OST that need to be addressed to enable private sector oversight. Thus, Article I, II, VI are given particular focus, and new provisions that would be relevant to the rights and obligations of private entities involved in space exploration are addressed. Currently, the OST mandates States to regulate activities of private entities that fall within its jurisdiction. However, for instance in case of the new Luxembourg Asteroid Mining Law that aims to attract companies from across the world to do business in Luxembourg, finding the true identity of such a multi national company can be an issue. Also, plans of mars colonisation are against the basic principles of OST. Reforms will be proposed that will ensure that the OST provides a legal framework for the future, while also serving as a guiding light for future domestic space legislation in an effort to promote uniformity in domestic laws. To aid in this development of national space law, the paper proposes adopting a outer space model like the one put forth by the United Nations Convention of the Law of the Sea, and it's creation, the International Sea-Bed Authority. Therefore, the creation of an international body that regulates private action under the OST is suggested. Further, along with the framework of future national laws, dispute resolution mechanisms are also suggested.